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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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ROBERT E. BUSHNELL 1522 K STREET NW SUITE 300 WASHINGTON, DC 20005-1202			HABERMEHL, JAMES LEE	
			ART UNIT	PAPER NUMBER
			2651	

DATE MAILED: 11/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/971,081

Applicant(s)

SON, OK-HYUN

Examiner

James L. Habermehl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 Aug 05, 19 Aug 05, and 21 Oct 05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 19 Aug 05.

- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date 0.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. This Office action is in response to paper filed 18 August 2005 and personal interview with applicant's representative, which papers have been placed of record in the file.
2. During a telephone conversation with Mr. Robert Bushnell on 18 Oct 05 the examiner invited Mr. Bushnell to make a provisional election to a restriction requirement, but a provisional election was not made at that time because Mr. Bushnell requested the provisional election information be sent to him by FAX instead of communicated over the telephone. The examiner complied with applicant's request on 18 Oct 05. Mr. Bushnell submitted a paper on 21 Oct 05 wherein, in response to the examiner's invitation to elect by telephone, applicant made a provisional election with traverse. Applicant pointed out that the claims in question have already been examined on their merits. Even though the present examiner held some of the claims indefinite, the previous examiner examined the claims without finding them indefinite. Thus, the claims have already been examined on their merits, and in the interest of compact prosecution the examiner finds this argument persuasive and will not impose a restriction requirement upon the present claims.
3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification fails to describe "a controller regulating movement of said head based on at least one of said first data address mark and said second data address mark."

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4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 32-34 and 50-52 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains the limitation "a controller regulating movement of said head based on at least one of said first data address mark and said second data address mark" which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no disclosure of regulating movement of the head based on one of the data address marks as claimed. Col. 4, lines 5-11 show the disk format is servo sectors and data sectors, and the actual digital data is written into the data fields which are in the data sectors, not the servo sectors. Col. 4, lines 26-30 and 34-37 show the data address mark is part of the data field, the data address mark informs that the data is started and provides necessary synchronization when reading the data, and the data is the actual digital information stored in the disk, and thus is not the servo information stored on the disk in the servo sector. Col. 4, lines 12-21 do discuss information such as cylinder number which could conceivably be used while regulating movement of said head, but this is in the context of the ID field, which is distinct from the data field. Col. 5, lines 21-43 describe regulating movement of said head, but by using head position information which is servo information, and by using a track number. The disclosure does not state the source of the track number information. A review of all the prior art cited by both the examiner and by applicant

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during the prosecution of this application shows track number information is commonly obtained in the art from the servo information in servo sectors, not from the user data in data sectors.

Even if it were obtained from the cylinder number mentioned above, that would still be from the ID field and not from the data field. There is no description of said claim limitation in applicant's disclosure as originally filed, thus said claim limitation is new matter and must be deleted from the claims.

6. Claims 32-34 and 50-52 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for reading first and second data address marks, does not reasonably provide enablement for "a controller regulating movement of said head based on at least one of said first data address mark and said second data address mark." The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. Col. 5, lines 21-43 describe regulating movement of said head, but by using head position information which is servo information, and by using a track number. The disclosure does not state the source of the track number information. A review of all the prior art cited by both the examiner and by applicant during the prosecution of this application shows it is commonly obtained in the art from the servo information in servo sectors, not the user data in data sectors. Even if it were obtained from the cylinder number mentioned above, that would still be from the ID field and not from the data field. Making the claimed invention would require undue experimentation, as the disclosure completely lacks any description of how one can regulate the position of the head based on data address marks, while the cited prior art fails to show even the slightest description

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of how this feat can be performed and the examiner in his experience can not recall any showing in the prior art of such a means for regulating head movement. The examiner does not consider this claim limitation to necessarily be beyond the level of ordinary skill in the art, but at this time it is not possible to make any such determination without knowing how the claimed movement regulation is performed, and applicant's disclosure fails to provide any details requisite for making such a determination; applicant's disclosure provides no guidance as to how to make this aspect of the claimed invention.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-3, 6, 16-17, 20-21, 24, 26-28, 31, 35-49 and 54 are rejected under 35 U.S.C. 102(e) as being anticipated by Malone, Sr. Malone, Sr. Figures 2A, 5A-8, and 10 meet all the limitations of claims 1, 16, 20, 24, 26-27, 31, 37, 40, 44, 46-47, 49, and 54. Figure 5A shows recording said data address mark to establish synchronization requested for reading user data in at least two different recording locations (14 and 62, where sync bytes correspond to the claimed data address marks as they indicate the location of the data along the track), and Figure 8 shows when one data address mark (14) is detected (92) to establish synchronization requested for reading user data (96), regarding said one mark as an effective mark of a corresponding data

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region, and skipping a remaining mark (62) when any one mark is normally detected (98), which comprises distinguishing between the two address marks. Figure 2A shows data blocks (34) preceding said servo information areas (30).

Regarding claims 2, 17, 21, 28, 35-36, 38-39, 45, and 48, Figure 5A shows sync bytes 14 and 62 are recorded in two separate locations, and col. 7, lines 47-49 show the second data address mark (secondary sync byte) recorded with a pattern different from the first pattern.

Regarding claim 3, col. 5, lines 56-57 show each said address mark (sync byte) being constructed of one (or more) byte of information.

Regarding claim 6 and 41-43, col. 13, lines 49-57 show the data address mark (sync byte) being detected by a disk drive controller performing a masking function with respect to the data address mark (sync byte).

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 7-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of the Admitted Prior Art and Malone, Sr. Regarding claims 7 and 11-12, the Admitted Prior Art shows a headerless servo recording system with headerless servo sectors and data sectors with an ID field and a data field with a single data address mark.

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Malone, Sr. Figure 5A shows recording a data address mark to establish synchronization requested for reading user data in at least two different recording locations (14 and 62, where sync bytes correspond to the claimed data address marks as they indicate the location of the data along the track), Figures 8 and 10 show detecting said data address mark to confirm validity of user data following said data address mark (92, 94), and Figure 8 shows when one data address mark (14) is detected (92) to establish synchronization requested for reading user data (96), regarding said one mark as an effective mark of a corresponding data region for confirming the validity of the data, and skipping a remaining mark (62) when any one mark is normally detected (98), which comprises distinguishing between the two address marks. Malone, Sr. also shows a disk with tracks having servo sectors and data sectors, an error correction code region, a transducer head for reading and writing data and read servo, and means for positioning the head across the tracks (Figures 2A and 6).

Malone, Sr. shows an embodiment using servo blocks with header information, col. 2, lines 24-30 show it was known to Malone, Sr. to use an identification field in each data sector, col. 6, lines 23-25, col. 7, lines 7-10 show the invention of Malone, Sr. can be used with other servo schemes and disk formats, and claim 1 in light of the further limitation of claim 5 shows that the invention of Malone, Sr. is not limited to only headerless data blocks. Malone, Sr. does all this for the purpose of providing sync byte redundancy to improve overall disk drive reliability.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the disclosures of Malone, Sr. with the Admitted Prior Art to yield a headerless servo recording system comprising data sectors that include identification fields and

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that uses redundant sync bytes for data detection, the motivation being to provide sync byte redundancy to improve overall disk drive reliability in a headerless servo recording system.

Regarding claims 8 and 13, Malone, Sr. Figure 5A shows sync bytes 14 and 62 are recorded in two separate locations, and col. 7, lines 47-49 show the second data address mark (secondary sync byte) recorded with a pattern different from the first pattern.

Regarding claims 9 and 14, Malone, Sr. col. 5, lines 56-57 show each said address mark (sync byte) being constructed of one (or more) byte of information.

Regarding claims 10 and 15, Admitted Prior Art Figure 2 shows the claimed identification field.

11. Claims 16-54 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Pannu v. Storz Instruments Inc.*, 258 F.3d 1366, 59 USPQ2d 1597 (Fed. Cir. 2001); *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

In claims 16, 20, 24, 26, 31, 32, and 35-54, applicant has omitted the language "skipping a remaining data address in said different recording locations of said data track, when any one data address mark recorded in said different recording locations is normally detected" and "said transducer head not utilizing a remaining data address mark recorded in said different recording locations of said data track, when a data address mark recorded in a different data address regions is detected." This language was specifically added to claims in the original patent to place it in condition for allowance.

Response to Arguments

12. Applicant's arguments filed 18 August 2005 have been fully considered but they are not persuasive.

Applicant has argued 1) that Malone, Sr. doesn't use the phrase "data address mark" (applicant's response pp. 6-8 and 19-20); 2) that Malone, Sr. uses some sort of pattern in its sync bytes that can be distinguished in some manner by the read channel electronics, and that this is different than applicant's invention which decodes the data address marks (pp. 8-10 and 12-13); and 3) that the sync bytes of Malone, Sr. are part of the servo sector, rather than part of a data block (pp. 8, 10-11, and 13-14). In response the examiner notes 1) that while industry standard definitions of the terms "data address mark" and "sync byte" may differ, what is at issue is whether the limitations of the claims are shown in the disclosure of the reference(s), and in this case the sync bytes of Malone, Sr. meet the limitations as claimed of data address marks for the reasons given even though they may have other, unclaimed differences such as might be inferred from their labels under industry standard definitions; 2) that regarding "decoding," applicant is

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arguing limitations not claimed; and 3) that the sync bytes of Malone, Sr. are part of the data block (e.g., see Fig. 5A-5B).

Applicant questions where Malone, Sr. discloses 1) decoding the sync bytes as a component of the data field (applicant's response p. 14), 2) that a data address mark is a pattern or a group of adjacent patterns (pp. 14-15), and 3) that a data address mark informs the disk drive that the data is started and provides necessary synchronization when reading the data (p. 15). In response the examiner notes 1) that the sync bytes are part of the data field, as stated above, and that "decoding" is not claimed, 2) that applicant appears to have cited a passage from Malone, Sr. that discloses the sync bytes are a pattern or a group of adjacent patterns (Malone, Sr. col. 2, lines 62-63), and these sync bytes are what the examiner is reading on the claimed data address marks, so the examiner does not understand what he is being asked to further provide, and 3) that Malone, Sr. col. 2, lines 62-65 discloses the sync bytes "mark the beginning of the data field and provide a frame of reference for correctly distinguishing data bytes," and these sync bytes are what the examiner is reading on the claimed data address marks.

Applicant has argued that Malone, Sr. teaches various characteristics of sync bytes, while various sources teach various characteristics of data address marks (applicant's response pp. 15-17). In response the examiner notes applicant is arguing limitations not claimed.

Applicant has argued that Malone, Sr. does not disclose patterns which "can be distinguished in some manner by the read channel electronics including specific addresses of data fields (applicant's response pp. 17-19). In response the examiner notes applicant is arguing limitations not claimed.

Applicant has argued that Malone, Sr. does not show confirming validity of user data contained in said data area following said data address mark, and does not show indicating a validity of data recorded on said data sector (applicant's response pp. 20-21). In response the examiner notes that Malone, Sr. Figures 8 and 10 show detecting said data address mark to confirm validity of user data following said data address mark (92, 94), where the examiner considers Malone, Sr. sync byte fields 14 and 62 to meet applicant's limitation of data address marks, as stated above. When the sync byte or bytes is/are detected, then the bytes starting time T later are considered data, and hence the detection has confirmed validity, and indicated a validity, of user data.

Applicant has argued that Malone, Sr. does not show skipping a remaining mark when any one mark is normally detected but instead teaches a two-out-of-three detection technique. Also argued is that Malone, Sr. does not show motivation to replace the sync byte fields 14 and 62 with applicant's data address mark, and that data address marks are not read and decoded during a sync detection timing window (applicant's response pp. 22-24). In response the examiner notes that Malone, Sr. attempts to detect the primary sync byte field 14 and if it does so it then skips the secondary sync byte field 62, and shows that the sync byte fields can be any number of bytes, including one (Malone, Sr. col. 3, line 66 through col. 4, line 3 and col. 5, lines 56-57), thus the preferred embodiment of three bytes and two-out-of-three voting is not exclusively required (col. 6, lines 1-7). The examiner further notes that no replacement of the sync byte fields with applicant's data address marks, nor the consequent reading and decoding of the marks during the sync detection timing window, is required or envisioned in the examiner's

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rejection, as the claimed limitations of skipping and not utilizing a remaining address mark are met by the sync byte fields and associated circuitry and method of Malone, Sr. as stated above.

Applicant has argued that the examiner has improperly imposed a per se rule of recapture as the scope of the newly introduced claims in the reissue application lies in-between the innermost and outermost circles of the *Ex Parte Eggert* metaphor (applicant's response pp. 25-28). In response the examiner refers again to the following MPEP passage which the examiner understands to address applicant's situation. This second passage from the M.P.E.P., Section 1412.02, shows the reissue claims constitute recapture of surrendered subject matter as all the reissue claims are impermissibly broadened with respect to the limitations of the patented claims that were specifically cited as the reasons for allowance as discussed above, and thus the surrender-generating limitation as discussed below (emphasis in the original):

2. Comparison of Reissue Claims Narrowed/Broadened *Via- à-vis* the Patent Claims

The 'patent claims,' in the context of recapture case law, are claims which issued in the original patent for which reissue is now being sought. As pointed out above, where the reissue claims are narrower than the claims of the original patent in all aspects, then there can never be recapture. If reissue claims are equal in scope to the patent claims, there is no recapture as to those reissue claims. Where, however, reissue claims are both broadened and narrowed as compared with the original patent claims, the nature of the broadening and narrowing must be examined to determine whether the reissue claims are barred as being recapture of surrendered subject matter. If the claims are 'broader than they are narrower in a manner directly pertinent to the subject matter... surrendered

during prosecution' (*Clement*, 131 F.3d at 1471, 45 USPQ2d at 1166), then recapture will bar the claims. This narrowing/broadening *vis- à-vis* the patent is broken down into four possibilities that will now be addressed.

The "limitation" presented, argued, or stated to make the claims patentable over the art (in the application) "generates" the surrender of claimed subject matter. For the sake of simplification, this limitation will be referred to throughout this section as the *surrender-generating limitation*. If a claim is presented in a reissue application that omits, in its entirety, the surrender-generating limitation, that claim impermissibly recaptures what was previously surrendered, and that claim is barred under 35 U.S.C. 251. This terminology will be used in the discussion of the four categories of narrowing/broadening *vis- à-vis* the **patent** that follows.

(a) Reissue Claims are Narrower in Scope Than Patent Claims, in Area Not Directed to Amendment/Argument Made to Overcome Art Rejection in Original Prosecution; are Broader in Scope by Omitting Limitation(s) Added/Argued To Overcome Art Rejection in Original Prosecution:

In this case, there is recapture.

This situation is where the patent claims are directed to combination ABC and the reissue claims are directed to ABD. Element C was either a limitation added to AB to obtain allowance of the original patent, or was argued by applicant to define over the art (or both). Thus, addition of C (and/or argument as to C) has resulted in the surrender of any combination of A & B that does not include C; this is the surrendered subject matter. Element D, on the other hand, is not related to the surrendered subject matter. Thus, the

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reissue claim, which no longer contains C, is broadened in an area related to the surrender, and the narrowing via the addition of D does not save the claim from recapture since D is not related to the surrendered subject matter.

Reissue claims that are broader than the original patent claims by not including the surrender-generating limitation (element C, in the example given) will be barred by the recapture rule even though there is narrowing of the claims not related to the surrender-generating limitation. As stated in the decision of *In re Clement*, 131 F.3d at 1470, 45 USPQ2d at 1165, if the reissue claim is broader in an aspect germane to a prior art rejection, but narrower in another aspect completely unrelated to the rejection, the recapture rule bars the claim. *Pannu v. Storz Instruments Inc.*, *supra*, then brings home the point by providing an actual fact situation in which this scenario was held to be recapture.

Applicant has argued that the cited claim language is not the subject of any disclaimer by applicant (applicant's response pp. 28-29). In response the examiner refers again to the following MPEP passage which the examiner understands to address applicant's situation. This passage shows the subject matter in question is surrendered due to the amendment adding the additional limitations which were specifically cited by the examiner as allowable and subsequently as the reasons for allowance of the patented claims:

(B) Example (2) - Amendment of the claims without argument:

The limitation omitted in the reissue claim(s) was added in the original application claims for the purpose of making the application claims allowable over a rejection or objection made in the application. Even though applicant made no argument on the record that the limitation was added to obviate the rejection, the nature of the addition to the claim can show that the limitation was added in direct reply to the rejection. This too will establish the omitted limitation as relating to subject matter previously surrendered. To illustrate this, note the following example:

The original application claims recite limitations A+B+C, and the Office action rejection combines two references to show A+B+C. In the amendment replying to the Office action, applicant adds limitation D to A+B+C in the claims, but makes no argument as to that addition. The examiner then allows the claims. Even though there is no argument as to the addition of limitation D, it must be presumed that the D limitation was added to obviate the rejection. The subsequent deletion of (omission of) limitation D in the reissue claims would be presumed to be a broadening in an aspect of the reissue claims related to surrendered subject matter. Accordingly, the reissued claims would be barred by the recapture doctrine.

Applicant has argued that Section 251 allows for enlarging the scope of the claims in a reissue application within a two year window (amendment pp. 31-33), that the reissue claims do not constitute recapture because they are subject matter wholly different from the subject matter of the patented claims (amendment pp. 33-35), and that applicant did not surrender any subject

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matter because applicant argued that the amendment was not required to overcome the cited art (amendment pp. 35-38). In response the examiner notes that he responded to these arguments in the previous Office action, paper no. 20050510, mailed 18 May 05, and maintains his position for the reasons of record.

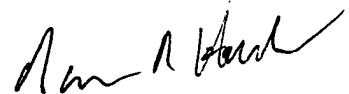
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Habermehl whose telephone number is (571)272-7556. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Hudspeth can be reached on (571)272-7843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Habermehl/jlh
9 Nov 05



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